



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 13, 2023

IN THE MATTER OF:

Appeal Board No. 627710

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 627709 and 627710, the claimant appeals from the decisions of the Administrative Law Judge filed January 9, 2023, which sustained the initial determinations, holding the claimant ineligible to receive benefits, effective July 13, 2020, through July 19, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective July 20, 2020, through August 2, 2020 on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a further hearing. In the interests of justice, additional testimony and evidence should be taken regarding the claimant's failure to certify and register for unemployment insurance benefits for the period effective July 13, 2020, through August 2, 2020.

At the further hearing, the claimant is directed to produce a record of all telephone calls that he made to the Department of Labor from June 2020, through October of 2020, via landline and/or cellular telephone. He

will then testify as to the frequency of such telephone calls including the times and dates, and whether he also attempted to reach the Department of

Labor via any other methods such as email, secure message, or other means during this same period. By this remand order, the claimant is placed on notice to immediately make a request for his landline and/or cell phone records from the relevant phone carriers. The telephone records, and any documentary evidence relevant to such testimony, shall be produced at hearing for potential entrance into the record. Failure to produce such records may result in a negative inference being taken against the claimant.

The Commissioner of Labor shall appear and produce a first-hand witness capable to testify about the claimant's claim for benefits, effective December 23, 2019, and his attempts to certify and to register for benefits for the period between July 13, 2020, and August 2, 2020. In conjunction with such testimony, this witness will testify as to the following:

(1) any systemic problems or disruptions in the Department of Labor's certification systems which would have affected the claimant's certifications from July 2020 through September 2020, and if so, what the problems were, when the problems were experienced, and what the claimant would have observed and/or experienced when attempting his certifications.

(2) the effect that the pandemic may have had on telephone and computer certifications during this period, and what messages a claimant would have received via the telephone, or via the computer, when the system was otherwise overwhelmed, had stopped functioning, or was down for repairs or upgrades.

(3) whether the claimant had exhausted his claim for regular benefits in July 2020, if not, all potential extensions or qualifications for additional benefits, when such extensions were granted, whether the extensions were retroactive and whether the extension could have affected his ability to certify for the relevant period.

This witness will be confronted with the Department of Labor's "Call History Report" (previously marked as Hearing Exhibit 1) and asked to explain the phrase "business logic kickout", the reason for such a phrase, and whether the call log would reflect unsuccessful attempts to access the Department of Labor's certification system.

The Commissioner of Labor shall produce its "Claimant Call Log" for the period of June 2020 through September 2020, which includes the dates of telephone calls, secure messages, letters sent, responses offered, changes to his claim

and the claimant's benefit ledger for 2020, reflecting all unemployment insurance benefits paid to the claimant on his unemployment claim, effective as of December 23, 2019.

Any documentary evidence produced at hearing deemed material and relevant shall be entered into the record after an opportunity for objection by the parties. The Judge shall also take such additional testimony and evidence necessary to complete the record.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the

remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER